
1995 Wis Eth Bd 7
BOARDS, COMMISSIONS AND AGENCIES; INFLUENCING OFFICIAL
JUDGMENT; SOLICITATION

Neither the lobbying law nor Ethics Code applies to every state agency employee. However, state employees are likely to report to, and act at the direction of, individuals subject to one or both of these statutes. Therefore, the Ethics Board advises that an agency may solicit and accept money from others to cover administrative expenses for its project as long as (1) individuals, businesses and organizations that are solicited for, or who make, contributions are not likely to be substantially affected by statutes and rules the agency administers and enforces; and (2) neither lobbyists nor organizations that employ lobbyists are solicited unless a specific exception pertains. OEB 95-7 (December 22, 1995)

Facts

[1] This opinion is based upon these understandings:

- a. You are an attorney with a state agency and you write on the agency's behalf.
- b. The agency has agreed to participate with a number of Wisconsin organizations and businesses in developing a project and applying for a permit from a federal agency under a federal act in order to help implement that project.
- c. The agency will facilitate and administer the project.
- d. A number of the businesses participating in the project are lobbying principals in Wisconsin; other businesses include those whose activities the agency regulates.

Question

[2] The Ethics Board understands your questions to be:

May the agency solicit and accept funds from participants in the project to help defray the agency's costs in administering the project?

Discussion

[3] The provisions of the Ethics Code and lobbying law administered by the Ethics Board that are most pertinent to your question are §§19.45(3) and 13.625, *Wisconsin Statutes*. Section 19.45(3) provides:

19.45 Standards of conduct; state public officials. (3) No person may offer or give to a state public official, directly or indirectly, and no state public official may solicit or accept from any person, directly or indirectly, anything of value if it could reasonably be expected to influence the state public official's vote, official actions or judgment, or could reasonably be considered as a reward for any official action or inaction on the part of the state public official. This subsection does not prohibit a state public official from engaging in outside employment.

Section 13.625(3) provides:

13.625 Prohibited Practices. (3) No candidate for an elective state office, elective state official, agency official or legislative employe of the state may solicit or accept anything of pecuniary value from a lobbyist or principal, except as [specifically] permitted

Application of these statutory provisions to the question you have presented is governed by long-standing interpretations of the Ethics Board.

Section 19.45(3)

[4] The Board consistently has held that §19.45(3) operates regardless of whether the contributions solicited are directed toward the official's own benefit or to the benefit of another. 4 Op. Eth. Bd. 93 (1981); 4 Op. Eth. Bd. 51 (1980). The statutory bar extends to the solicitation or acceptance of contributions to a state agency. 10 Op. Eth. Bd. 31 (1988); 9 Op. Eth. Bd. 9 (1986); 7 Op. Eth. Bd. 19 (1983).

[5] Section 19.45(3)'s application depends on an objective, not a subjective standard; it proscribes an official's solicitation of anything of value if an impartial observer would reasonably expect the response to the solicitation to influence the official's judgment in matters related to his or her office. 4 Op. Eth. Bd. 93, *supra*; 4 Op. Eth. Bd. 51, *supra*.

[6] The Board has said that it is unreasonable to think that an official's actions or judgment would be influenced by contributions given by persons with respect to whom the official's office does not exercise any action at all or

only ministerial action or where the contributions are only of modest value. 1992 Wis. Eth. Bd. 23; 7 Op. Eth. Bd. 19 (1983); 4 Op. Eth. Bd. 51, *supra*.

[7] However, the Board has repeatedly advised that state officials not solicit contributions from individuals or entities that are likely to be materially affected by laws or rules which the official's agency is called upon to interpret or apply. 10 Op. Eth. Bd. 31, *supra*; 7 Op. Eth. Bd. 9 (1983). This would include businesses and organizations regulated by your agency. 1992 Wis. Eth. Bd. 23; 9 Op. Eth. Bd. 9 (1986). To do otherwise works against an official's impartiality and harms the agency's credibility. 10 Op. Eth. Bd. 31, *supra*.

Section 13.625(3)

[8] Section 13.625(3) applies to agency officials in a manner similar to §19.45(3). The Board has said that §13.625's prohibition can apply whether the contributions solicited are directed toward the official's own benefit or to the benefit of another.¹ 1994 Wis. Eth. Bd. 1. Under the lobbying law, once it is established that the parties involved are an agency official and a lobbyist or an organization that employs a lobbyist, no further analysis is required -- the official should not solicit money from a lobbyist or an organization that employs a lobbyist.

Advice

[9] Neither the lobbying law nor Ethics Code applies to every state agency employee. However, state employees are likely to report to, and act at the direction of, individuals subject to one or both of these statutes. Therefore, the Ethics Board advises that the agency may solicit and accept money from others to cover administrative expenses for its project as long as (1) individuals, businesses and organizations that are solicited for, or who make, contributions are not likely to be substantially affected by statutes and rules the agency administers and enforces; and (2) neither lobbyists nor organizations that employ lobbyists are solicited unless a specific exception pertains.

¹ This interpretation comports with the plain meaning of the statute and is supported by the fact that, when the legislature has wanted to permit the solicitation and acceptance of contributions from lobbyists and lobbying principals for specific state programs it has created specific exceptions to permit this. §§13.625(8) and (9). These provisions would be rendered superfluous if 13.625(3) were interpreted to permit the solicitation and acceptance of contributions for state agencies and programs, a result to be avoided in statutory interpretation. See, e.g., *State Central Credit Union v. Bigus*, 101 Wis.2d 237 (Ct. App. 1981); 80 Op. Att'y Gen. 19 (1991)